

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

L.C. CUNNINGHAM,

Plaintiff,

v.

J. PERDROZA, et al.,

Defendants.

1:23-cv-00041-ADA-EPG (PC)

ORDER REGARDING MOTION TO
DISMISS DEFENDANT J. PERDROZA
(ECF No. 41).

Plaintiff L.C. Cunningham is a state prisoner proceeding *pro se* and *in forma pauperis* in a civil rights action filed pursuant to 42 U.S.C. § 1983. (ECF No. 1). On November 17, 2023, Plaintiff submitted a motion requesting that the Court dismiss Defendant J. Perdroza from the case as he believes this Defendant was not involved in the underlying incident.

It appears that Plaintiff intends this filing as a notice of voluntary dismissal under Federal Rule of Civil Procedure 41(a)(1)(A)(i); however, that Rule only permits “a notice of dismissal *before* the opposing party serves either an answer or a motion for summary judgment.” (Emphasis added). Here, Defendant J. Perdroza has already filed an answer; thus, a notice of voluntary dismissal is inappropriate. (ECF No. 27).

However, Defendants may stipulate to the dismissal under a different provision, Rule 41(a)(1)(A)(ii), which provides for dismissal where there is “a stipulation of dismissal signed by all parties who have appeared.”

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Accordingly, IT IS ORDERED as follows:

1. By no later than November 30, 2023, all Defendants shall file a signed document reflecting their approval of the dismissal of Defendant J. Perdroza from this case or file a response opposing the dismissal.
2. Alternatively, by no later than November 30, 2023, the parties may file a stipulation of dismissal signed by *all* parties who have appeared in this action in compliance with Rule 41(a)(1)(A)(ii).

IT IS SO ORDERED.

Dated: November 20, 2023

/s/ Eric P. Grogan
UNITED STATES MAGISTRATE JUDGE